

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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 LIONEL PIPER, : Petitioner, :  
 :  
 -v- : :  
 JOSEPH T. SMITH, Superintendent of : Respondent. :  
 Shawangunk Correctional Facility, :  
 :  
 -----X

DENISE COTE, District Judge:

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") became effective on April 26, 1996. Among other things, AEDPA amended 28 U.S.C. § 2244 to require that habeas petitions brought under 28 U.S.C. § 2254 be filed no later than one year after the completion of state court direct review. 28 U.S.C. § 2244(d)(2) further provides, however, that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection."

On direct appeal from his conviction, Petitioner Piper was denied leave to appeal by the New York Court of Appeals on November 29, 2005. Therefore, petitioner's judgment of conviction became final within the meaning of AEDPA on February 27, 2006. Piper's petition states that on February 13, 2007 --

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07 Civ. 9866 (DLC)

ORDER

14 days prior to the end of AEDPA's one-year limitations period -- he filed a motion to vacate his conviction pursuant to N.Y. C.P.L.R. 440.10 that asserts some of the same claims offered in the instant petition. He states that this 440.10 motion was denied on June 18, 2007, and that leave to appeal that decision was denied by a judge of the Appellate Division on October 2, 2007. The tolling provided for by 28 U.S.C. § 2244(d)(2) ceased as of that date. Piper's petition is accompanied by a sworn statement reporting that he provided his petition to prison authorities for mailing on October 10, 2007. The petition was received by the Pro Se Office on October 22, 2007.

The Court having concluded that the petition should not be summarily dismissed pursuant to Rule 4 of the Rules governing Section 2254 cases in the United States District Courts, it is hereby

ORDERED that the respondent file an answer to the petition or other pleading in response thereto, along with the record on appeal, appellate briefs, and relevant trial and post-conviction records and transcripts, no later than March 7, 2008.

IT IS FURTHER ORDERED that the Clerk of Court serve copies of this Order and of the petition by certified mail upon the respondent and the District Attorney of Bronx County.

IT IS FURTHER ORDERED that petitioner shall have thirty days from the date on which he is served with respondent's

answer to file a response. The petition will be considered fully submitted as of that date.

IT IS FURTHER ORDERED that this action is referred to Magistrate Judge Ellis. All future correspondence and requests should be sent to the attention of Judge Ellis.

SO ORDERED:

Dated: New York, New York  
January 8, 2008

  
DENISE COTE  
United States District Judge